

KLARISSA GRAVES

VERSUS

ACE AMERICAN INSURANCE
COMPANY, HAAS & WILKERSON
INSURANCE COMPANY, INC. SKY
ATTRACTIONS, LLC, MCDONAGH
AMUSEMENTS, INC., AND KMG B.V.,
INC.

1ST JUDICIAL DISTRICT COURT
FOR THE PARISH OF CADDO
STATE OF LOUISIANA

DOCKET NO.: 571,254

DIVISION: A

FILED: _____

CLERK: _____

PETITION FOR DAMAGES

NOW INTO COURT, comes Plaintiff, Klarissa Graves, a person of the full age of majority who files this Petition for Damages and avers the following:

I.

PARTIES

1. Named Plaintiff herein is **Klarissa Graves**, a person of the full age of majority and who has procedural capacity to bring this suit;
2. Named Defendants herein are:
 - a. **SKY ATTRACTIONS, LLC**, [hereinafter referred to as "Sky Attractions"] a foreign limited liability company, whose registered agent is, and who may be served with process through its registered agent, Thomas McDonagh at 11300 Peet Cheasaning, MI 48616, and who may be served pursuant to LA. REV. STAT 13:3204;
 - b. **MCDONAGH AMUSEMENTS, INC.**, [hereinafter referred to as "McDonagh"], a foreign corporation whose principal place of business is in Michigan, and who may be served with process through its registered agent, Thomas McDonagh at 11300 Peet Cheasaning, MI 48616, and who may be served pursuant to LA. REV. STAT 13:3204;
 - c. **KMG B.V.**, [hereinafter referred to as "KMG"], an alien corporation doing business in the United States and the State of Louisiana, and who is to be served through the terms of the Hague Convention;
 - d. **HAAS & WILKERSON INC.**, a foreign insurance company located at 4300 Shawnee Mission Pkwy., Fairway, KS 66205-2526 licensed to do and doing business in the State of Louisiana, and who may be served with process through its registered agent, William R. Wilkerson, IV, at the address of the company;
 - e. **ACE AMERICAN INSURANCE COMPANY**, a foreign insurer who is licensed to do business in the state of Louisiana, and who may be served with process through the Louisiana Secretary of State at 8585 Archives Blvd., Baton Rouge, LA 70809; and
 - f. **JOHAN SMALL**, whose address is currently unknown to Plaintiff as it has been withheld from disclosure as of this time, but who is alleged to have been the operator of the ride at issue in this litigation which was the cause of Plaintiff's injuries;

PGS 7 EXH 1 MIN ✓
CC 6 CP 6 MAIL 6 N/J ✓
INDEX ✓ REC ✓ FAX ✓
W/D DOC ✓ CERT MAIL ✓
SERVICE ✓ See

Page 1 of 7

Faxed In
FILED 866.00

SEP 12 2013

SHARON NEWTON
DEPUTY CLERK OF COURT

Case 5:13-cv-03122 Document 1-4 Filed 11/22/13 Page 1 of 25 PageID #: 9

- g. **JOHANN PETRUS SMIT**, whose address is currently unknown to Plaintiff as it has been withheld from disclosure as of this time, but who is alleged to have been the operator of the ride at issue in this litigation which was the cause of Plaintiff's injuries; and
- h. **KIERAN MATTHEW FOURIES**, whose address is currently unknown to Plaintiff as it has been withheld from disclosure as of this time, but who is alleged to have been the operator of the ride at issue in this litigation which was the cause of Plaintiff's injuries;

VENUE AND JURISDICTION

II.

Venue is proper in the Parish of Caddo pursuant to Louisiana Code of Civil Procedure because the incident that is the subject of this suit occurred within Caddo Parish in the State of Louisiana.

III.

This Court has subject matter jurisdiction to hear the actions presented in this suit as it is a delictual action occurring within Caddo Parish in the State of Louisiana.

FACTS

IV.

On or about November 20, 2012, Plaintiff was attending the State Fair in Caddo Parish, which included various amusement rides provided by Defendants, Sky Attractions, McDonagh, and KMG.

V.

On November 20, 2012, Plaintiff was a passenger in the ride known as the Fun Factory, which had been manufactured by Defendant, KMG, and which was at all times under the control and operation of Defendants, Sky Attractions and McDonagh.

VI.

At the time of the incident at issue in this litigation, the Fun Factory ride was being monitored, operated, supervised, and under the exclusive control of Defendants, Johan Small, Johann Petrus Smith, and Keiran Matthew Fouries, who are hereinafter referred to collectively as "Defendant Operators."

VII.

Plaintiff entered the ride and was seated at the location directed by Defendant Operators. After Plaintiff was seated, Defendant Operators were responsible to secure all restraints and to

properly restrain Plaintiff within the Fun Factory ride.

X.

There were no warnings or instructions to alert Plaintiff of the danger that she would be ejected from the ride.

XI.

Defendant Operators began to operate the ride, after the ride began to circulate, Plaintiff was violently ejected from the ride and landed a distance of approximately 55 feet away.

CAUSE OF ACTION NUMBER 1:

LOUISIANA PRODUCTS LIABILITY ACT

XII.

Defendants, Sky Attractions and McDonagh, have labeled the ride at issue in this litigation as their own and held themselves out to be the owner/operator/source of the product at issue in this litigation.

XIII.

Accordingly, Defendants, Sky Attractions and McDonagh, are each alleged to have been a "manufacturer" within the terms of the Louisiana Product Liability Act.

XIV.

Defendant, KMG, is a "manufacturer" of the ride at issue in this litigation within the terms of the Louisiana Products Liability Act.

XV.

Defendants, Sky Attractions, McDonagh, and KMG, are liable unto Plaintiff under the Louisiana Products Liability Act for all damages sustained by Plaintiff for the following reasons:

- A. The ride at issue in this litigation was being used by Plaintiff in a reasonably anticipated manner at the time of Plaintiff's injury;
- B. The ride at issue in this litigation materially deviated from its specifications and intended design, thereby constituting a "composition" and/or "manufacturing" defect according to the Louisiana Products Liability Act;
- C. The ride at issue in this litigation was unreasonably dangerous in design, as there existed at the time this ride was manufactured alternative designs for the ride at issue in this litigation that were capable of preventing Plaintiff's injury and the

probability of harm and severity of harm presented by the design outweighed the burden of adopting the alternative design and any burden on social utility of adopting the alternative design; thereby constituting a "design" defect under the terms of the Louisiana Products Liability Act;

- D. The ride at issue in this litigation was "unreasonably dangerous for lack of adequate warnings" because the ride at issue in this litigation possessed an unreasonably dangerous characteristic and Defendants failed to properly provide adequate instructions and/or warnings of the unreasonably dangerous condition presented by this ride, namely that there was a risk that a person would be ejected from the ride, thereby constituting a "warnings" defect under the terms of the Louisiana Products Liability Act;
- E. Defendants provided express warranties associates with this ride that were untrue and which caused Plaintiff's injuries.

CAUSE OF ACTION NO. 2: NEGLIGENCE

XVI.

Defendants, Sky Attractions, McDonagh, Defendant Operators, and KMG, are liable unto Plaintiff for negligence under Articles 2315, 2316, 2317, 2317.1, and other provisions under the Louisiana law in the following respects:

- A. For failure to properly inspect the ride at issue in this litigation to determine whether it presented any unreasonable risks of harm;
- B. For failure to properly maintain and repair the ride at issue in this litigation to prevent the ride from exposing persons using the ride to unreasonable risks of harm;
- C. For the misrepresentation to Plaintiff and other persons that the ride was fit for ordinary use and presented no risks of harm to persons using the ride in a foreseeable manner;
- D. For failing to adopt and/or implement proper safety precautions and safety protocols to prevent the ride at issue in this litigation from presenting a danger or risk of harm to persons reasonably foreseen to use the ride at issue in this litigation; and

- E. For the failure to act as reasonably prudent persons under the circumstances in other respects as to be determined from now until the time of trial.

CAUSE OF ACTION NO. 3: STRICT LIABILITY

XVII.

Plaintiff further alleges that Defendant Operators and Defendants, Sky Attractions, McDonagh, and KMG, are further strictly liable for Plaintiff's damages under Articles 2317 and 2317.1 in the following respects:

- A. For having custody/garde of the ride at issue in this litigation;
- B. For having custody/garde of the ride which presented an unreasonable risk of harm;
- C. For having actual or constructive knowledge of the unreasonable risk of harm presented by the ride at issue in this litigation;
- D. For having custody/garde of a thing which presented an unreasonable risk of harm that caused damage to Plaintiff; and
- E. For failing to take adequate precautions to prevent exposing Plaintiff to unreasonable risks of harm presented by the ride.

CAUSE OF ACTION NO. 4: RES IPSA LOQUITUR

XVIII.

Negligence may be inferred from circumstantial evidence surrounding Defendants' conduct and from the injuries Plaintiff sustained pursuant to the doctrine of *res ipsa loquitur*.

XIX.

Plaintiff's injuries and death were caused by the ride which was in the complete and exclusive control of Defendants.

XX.

There are no other reasonable and/or probable explanations of the cause of Plaintiff's injuries other than that Defendants were negligent.

XXI.

The incident causing Plaintiff's injuries is one that would not occur unless Defendants were negligent.

XXII.

As a result, Defendants are liable for Plaintiff's injuries pursuant to the doctrine of *res ipsa*

loquitor.

VICARIOUS LIABILITY

XIX.

Defendants, KMG, Sky Attractions and McDonagh, are liable for all conduct of their employees, including Defendant Operators, pursuant to Louisiana's doctrine of *respondeat superior* or vicarious liability, as codified in Louisiana Civil Code Article 2320.

LOUISIANA DIRECT ACTION

XX.

Defendants, Ace American Insurance Company and Haas & Wilkerson Insurance Company, are alleged to have provided liability insurance for one or more defendants named herein for all conduct described herein and are thus proper parties to these proceedings pursuant to Louisiana's Direct Action Statute, and are thus solidarily liable for all damages claimed herein.

DAMAGES

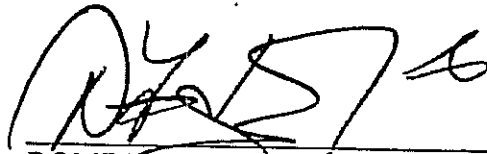
XXI.

As a result of the aforementioned conduct of Defendants, Plaintiff has suffered the following non-exclusive list of damages:

- A. Scarring and disfigurement;
- B. Past and future medical expenses;
- C. Past and future lost wages;
- D. Past and future physical pain and suffering;
- D. Past and future mental anguish, distress, and suffering;
- E. Loss of enjoyment of life; and
- F. Other damages as may be proven at the trial of this matter.

WHEREFORE, Plaintiff, Klarissa Graves, prays that after due proceedings be had, that there be judgment in her favor and against Defendants, Sky Attractions, McDonagh, Defendant Operators, Ace American Insurance Company, Haas & Wilkerson Insurance Company, and KMG, finding all Defendants jointly, severally, and solidarily liable for the damages claimed herein, together with all costs of these proceedings, interest from the date of judicial demand, and all other relief as is equitable or allowed by Louisiana law.

Respectfully Submitted,



DOMINICK E. IMPASTATO, III (#29056)
Frischhertz, Poulliard, Frischhertz, & Impastato,
LLC
1130 St. Charles Avenue
New Orleans, LA 70130
Telephone - (504) 523-1500
Facsimile - (504) 581-1670
Email: Dominick@fpfi-law.com

and

Ernest Perry, Jr. (#28287)
ERNEST R. PERRY, JR., LLC
440 E. Washington St.
Shreveport, LA 71104
318-629-1379 (phone)
318-629-3576 (fax)

PLEASE SERVE:

ACE AMERICAN INSURANCE COMPANY
Through its registered agent:
Louisiana Secretary of State
8585 Archives Blvd.
Baton Rouge, LA 70809

PLEASE ISSUE LONG ARM CITATION TO:

SKY ATTRACTIONS, LLC,
Through its registered agent
Thomas McDonagh
11300 Peet
Cheasaning, MI 48616

MCDONAGH AMUSEMENTS, INC.,
Through its registered agent
Thomas McDonagh
11300 Peet
Cheasaning, MI 48616

HAAS & WILKERSON INC.
Through its registered agent
William R. Wilkerson, IV
4300 Shawnee Mission Pkwy.
Fairway, KS 66205-2526

KMG, B.V.
Parallelweg 43
NL-7161 AE Neede

Case 5:13-cv-03122-EEF-MLH Document 1-4 Filed 11/22/13 Page 7 of 25 PageID #: 44

Case 5:13-cv-03122 Document 1-4 Filed 11/22/13 Page 7 of 25 PageID #: 15

FRISCHHERTZ, POUILLIARD,
FRISCHHERTZ, & IMPASTATO, L.L.C.
ATTORNEYS AT LAW
1130 ST. CHARLES AVENUE
NEW ORLEANS, LA 70130

LLOYD N. FRISCHHERTZ
MARCUS J. POUILLIARD
MARCL. FRISCHHERTZ
DOMINICK IMPASTATO, III.

Telephone: (504) 523-1500
Facsimile: (504) 581-1670
Toll Free: (855) 251-8469

WRITER=S EMAIL: dominick@fpfi-law.com

September 10, 2013

Via Federal Express and Fax File (318) 227-9080:

Clerk of Court
1ST Judicial District Court
501 Texas St., Caddo Parish Courthouse
Room 103
Shreveport, La. 71101- 5408

RE: *Klarissa Graves v. ACE American Ins. Co., et al.*
New Suit

Dear Sir/Madam:

Enclosed find the Petition for Damages. Kindly file this Petition on today's date and an original will follow within five (5) business days as required by law. Enclosed please find our firm's check number 20326 in the amount of \$866.00 representing payment for filing. If you wish to discuss this matter further, please feel free to contact me.

Sincerely,

Dominick F. Impastato, III/KC

Dominick F. Impastato, III

DFliii/klc
Enclosures

Citation

GRAVES, KLARISSA

VERSUS

ACE AMERICAN INSURANCE COMPANY ETAL

NO. 571254-A
STATE OF LOUISIANA
PARISH OF CADDO
FIRST JUDICIAL DISTRICT COURT

THE STATE OF LOUISIANA: TO ACE AMERICAN INSURANCE COMPANY, THRU
HONORABLE SECRETARY OF
STATE OF LA
BATON ROUGE, LA 70809

of the Parish of EAST BATON ROUGE

YOU HAVE BEEN SUED.

Attached to this Citation is a certified copy of the Petition.* The petition tells you what you are being sued for.

You must EITHER do what the petition asks, OR, within FIFTEEN (15) days after you have received these documents, you must file an answer or other legal pleadings in the Office of the Clerk of this Court at the Caddo Parish Court House, 501 Texas Street, Room 103, Shreveport, Louisiana.

If you do not do what the petition asks, or if you do not file an answer or legal pleading within FIFTEEN (15) days, a judgment may be entered against you without further notice.

This Citation was issued by the Clerk of Court for Caddo Parish, on this date September 12, 2013.

*Also attached are the following:

— REQUEST FOR ADMISSIONS OF FACTS

— INTERROGATORIES

— REQUEST FOR PRODUCTION OF DOCUMENTS

GARY LOFTIN, CLERK OF COURT

MIKE SPENCE, CHIEF DEPUTY

By: _____
Deputy Clerk

DOMINICK F IMPASTATO III
Attorney

FILE

COPY

Long Arm Citation

GRAVES, KLARISSA

VERSUS

ACE AMERICAN INSURANCE COMPANY ETAL

NO. 571254-A
STATE OF LOUISIANA
PARISH OF CADDO
FIRST JUDICIAL DISTRICT COURT

THE STATE OF LOUISIANA: TO SKY ATTRACTIONS, LLC, THRU
THOMAS MCDONAGH, AGENT
11300 PEET
CHEASANING, MI 48616

YOU HAVE BEEN SUED.

Attached to this Citation is a certified copy of the Petition.* The petition tells you what you are being sued for.

You must EITHER do what the petition asks, OR, within THIRTY (30) days after you have received these documents, you must file an answer or other legal pleadings in the Office of the Clerk of this Court at the Caddo Parish Court House, 501 Texas Street, Room 103, Shreveport, Louisiana.

If you do not do what the petition asks, or if you do not file an answer or legal pleading within THIRTY (30) days, a judgment may be entered against you without further notice.

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— INTERROGATORIES

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GARY LOFTIN, CLERK OF COURT

MIKE SPENCE, CHIEF DEPUTY

By: _____

Deputy Clerk

DOMINICK F IMPASTATO, III
Attorney

FILE

COPY

Case 5:13-cv-03122 Document 1-4 Filed 11/22/13 Page 10 of 25 PageID #: 18

Long-Arm Citation

GRAVES, KLARISSA

VERSUS

ACE AMERICAN INSURANCE COMPANY ETAL

NO. 571254-A
STATE OF LOUISIANA
PARISH OF CADDO
FIRST JUDICIAL DISTRICT COURT

THE STATE OF LOUISIANA: TO MCDONAGH AMUSEMENTS, INC, THRU
THOMAS MCDONAGH, AGENT
11300 PEET
CHEASANING, MI 48616

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GARY LOFTIN, CLERK OF COURT

MIKE SPENCE, CHIEF DEPUTY

By: _____

Deputy Clerk

DOMINICK F IMPASTATO, III
Attorney

FILE

COPY

2013 SEP 12 10 10 AM CADD PARISH CLERK

Long Arm Citation

GRAVES, KLARISSA

VERSUS

ACE AMERICAN INSURANCE COMPANY ETAL

NO. 571254-A
STATE OF LOUISIANA
PARISH OF CADDO
FIRST JUDICIAL DISTRICT COURT

THE STATE OF LOUISIANA: TO HAAS & WILKERSON, INC, THRU
WILLIAM R WILKERSON, IV
4300 SHAWNEE MISSION PKWY
FAIRWAY, KS 66205-2526

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___ REQUEST FOR ADMISSIONS OF FACTS

___ INTERROGATORIES

___ REQUEST FOR PRODUCTION OF DOCUMENTS

GARY LOFTIN, CLERK OF COURT

MIKE SPENCE, CHIEF DEPUTY

By: _____

Deputy Clerk

DOMINICK F IMPASTATO, III
Attorney

FILE

COPY

Case 5:13-cv-03122 Document 1-4 Filed 11/22/13 Page 12 of 25 PageID #: 20

Long Arm Citation

ds

GRAVES, KLARISSA

VERSUS

ACE AMERICAN INSURANCE COMPANY ETAL

NO. 571254-A
STATE OF LOUISIANA
PARISH OF CADDO
FIRST JUDICIAL DISTRICT COURT

THE STATE OF LOUISIANA: TO KMG, B.V.
PARALLELWEG 43
NL-7161 AE NEEDE

YOU HAVE BEEN SUED.
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— REQUEST FOR ADMISSIONS OF FACTS
— INTERROGATORIES
— REQUEST FOR PRODUCTION OF DOCUMENTS By: _____

GARY LOFTIN, CLERK OF COURT
MIKE SPENCE, CHIEF DEPUTY

Deputy Clerk

DOMINICK F IMPASTATO, III
Attorney

Case 5:13-cv-03122 Document 1-4 Filed 11/22/13 Page 13 of 25 PageID #: 21

FILE
COPY

KLARISSA GRAVES

VERSUS

1ST JUDICIAL DISTRICT COURT
FOR THE PARISH OF CADDO
STATE OF LOUISIANAACE AMERICAN INSURANCE COMPANY,
HAAS & WILKERSON INSURANCE
COMPANY, INC. SKY ATTRACTIONS, LLC,
MCDONAGH AMUSEMENTS, INC., AND
KMG B.V., INC.

DOCKET NO.: 571, 254

DIVISION: A

FILED: _____

CLERK: _____

AFFIDAVIT OF SERVICE

STATE OF LOUISIANA

PARISH OF ORLEANS

Before me, the undersigned Notary Public, personally appeared KRISTIE COLOPY, an employee of Dominick F. Impastato, III, Frischhertz, Poulliard, Frischhertz, and Impastato, LLC at 1130 St. Charles Avenue, New Orleans, Louisiana 70130, who, after being duly sworn, said that on September 18, 2013, served certified copies of the following pleadings in this action: (1) Petition for Damages.

These pleadings were served under the Louisiana Long-Arm Statute, La. Rev. Stat. Ann. §§ 13:3201 et seq., and pursuant to Section 3204 of Title 13, by mailing them to Defendant, Haas & Wilkerson, Inc., 4300 Shawnee Mission Parkway, Fairway, KS 66205, by certified mail, return receipt requested, properly addressed and postage prepaid.

On September 30, 2013, the above described pleadings were delivered and received by Defendant, Haas & Wilkerson, Inc. KRISTIE COLOPY received the attached postal receipt, indicating that the pleadings had been delivered to defendant.

Kristie Colopy
Kristie Colopy

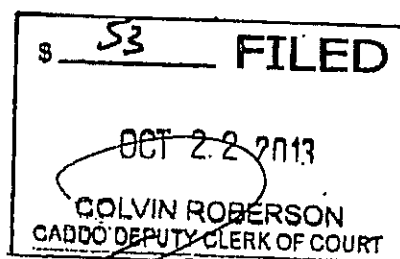
FILED	1	EXH	3	MDN	✓
CC		CP		MAIL	NO
INDEX		REC		FAX	
VER				CERT MAIL	

SWORN TO AND SUBSCRIBED
BEFORE ME this 10th day of October, 2013.

[Signature]
NOTARY PUBLIC

DOMINICK F. IMPASTATO III
Notary Public, Bar No. 29056
State of Louisiana
My Commission is issued for Life

Page 1 of 1



FRISCHHERTZ, POUILLIARD,
FRISCHHERTZ, & IMPASTATO, L.L.C.
ATTORNEYS AT LAW
1130 ST. CHARLES AVENUE
NEW ORLEANS, LA 70130

LLOYD N. FRISCHHERTZ
MARCUS J. POUILLIARD
MARCL. FRISCHHERTZ
DOMINICK IMPASTATO, III.

Telephone: (504) 523-1500
Facsimile: (504) 581-1670
Toll Free: (855) 251-8469

WRITER'S EMAIL: dominick@fpfi-law.com

September 18, 2013

Via Certified Mail 7008 0500 0002 0790 1892
Haas & Wilkerson, Inc.
William R. Wilkerson, IV
4300 Shawnee Mission Pkwy.
Fairway, KS 66205-2526

RE: *Klarissa Graves v. ACE American Ins. Co., et al.*
1st JDC, No.: 571,254, Div. A

Dear Sir/Madam:

You are hereby summoned to comply with the demand contained in the Petition for Damages, of which a true and correct copy accompanies this letter and citation, or make an appearance, either by filing a pleading or otherwise in the 1st Judicial District Court for the Parish of Caddo, State of Louisiana, within thirty (30) days after receipt of this correspondence as required by the Louisiana Long-Arm Statute.

Sincerely,

Dominick F. Impastato, III

Dominick F. Impastato, III

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information, visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To: <i>long arm etc.</i>	
Street, Apt. No., or PO Box No. <i>DFI K. Graves</i>	
City, State, ZIP+4	

\$	FILED
OCT 22 2013	
COLVIN ROBERSON	
CLERK OF COURT	

EXHIBIT
<i>A</i>

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.

Print your name and address on the reverse so that we can return the card to you.

Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

HAN 3 Wilkerson, Inc.
William R. Wilkerson, IV
4300 Shawnee Mission Pkwy.
Fairway, KS 66205

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Bill Cogan*

☐ Agent
☐ Addressee

B. Receiver (Printed Name)

Bill Cogan

C. Date of Delivery
SEP 30 2013

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail
☐ Registered
☐ Insured Mail
☐ Express Mail
☐ Return Receipt for Merchandise
☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label)
7008 0500 0002 0790 1892

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Handwritten

DFI: K. Carver

Frischhertz, Poullard, Frischhertz and Impastato, LLC
1130 St Charles Ave.
New Orleans, LA 70130

1-800-275-8777

FRISCHHERTZ, POULLIARD,
FRISCHHERTZ, & IMPASTATO, L.L.C.
ATTORNEYS AT LAW
1130 ST. CHARLES AVENUE
NEW ORLEANS, LA 70130

LLOYD N. FRISCHHERTZ
MARCUS J. POULLIARD
MARCL. FRISCHHERTZ
DOMINICK IMPASTATO, III.

Telephone: (504) 523-1500
Facsimile: (504) 581-1670
Toll Free: (855) 251-8469

WRITER=S EMAIL: dominick@lpi-law.com

October 18, 2013

Via Federal Express and Fax File (318) 227-9080:

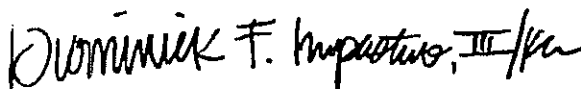
Clerk of Court
1ST Judicial District Court
501 Texas St., Caddo Parish Courthouse
Room 103
Shreveport, La. 71101- 5408

RE: *Klarissa Graves v. ACE American Ins. Co., et al.*
1st JDC, Docket No.: 571,254, Div. A

Dear Sir/Madam:

Enclosed find the Affidavit of Service. Kindly file this Affidavit of Service on today's date and an original will follow within five (5) business days as required by law. Enclosed please find our firm's check number 20848 in the amount of \$53.00 representing payment for filing. If you wish to discuss this matter further, please feel free to contact me.

Sincerely,



Dominick F. Impastato, III

DFliii/klc
Enclosures

Case 5:13-cv-03122 Document 1-4 Filed 11/22/13 Page 18 of 25 PageID #: 26
111520135CAN000000200

KLARISSA GRAVES

DOCKET NO. 571,254-A

VERSUS

FIRST JUDICIAL DISTRICT COURT

ACE AMERICAN INSURANCE
COMPANY, HAAS & WILKERSON
INSURANCE COMPANY, INC., SKY
ATTRACTIONS, LLC, MCDONAGH
AMUSEMENTS, INC., AND KMG B.V.,
INC.

CADDO PARISH, LOUISIANA

MOTION AND ORDER OF DISMISSAL

NOW INTO COURT, through undersigned counsel, comes KLARISSA GRAVES, plaintiff, and upon representing to the court that she wishes to dismiss HAAS & WILKERSON, INC., without prejudice;

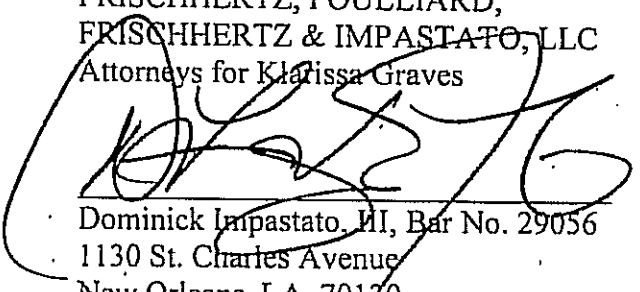
IT IS HEREBY ORDERED that all claims of plaintiff, KLARISSA GRAVES against HAAS & WILKERSON, INC., be and are hereby dismissed, without prejudice, with plaintiff reserving her rights against all other parties.

THIS 13 day of Nov, 2013.

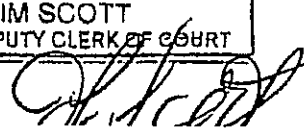

DISTRICT JUDGE
court cost R

Respectfully submitted,

FRISCHHERTZ, POULLIARD,
FRISCHHERTZ & IMPASTATO, LLC
Attorneys for Klarissa Graves


Dominick Impastato, III, Bar No. 29056
1130 St. Charles Avenue
New Orleans, LA 70130
504-523-1500 Telephone
504-581-1670 Facsimile

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W/D DOC 1 CERT MAIL 1
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JIM SCOTT
CADDO DEPUTY CLERK OF COURT


Case 5:13-cv-03122 Document 1-4 Filed 11/22/13 Page 19 of 25 PageID #: 27

KLARISSA GRAVES

DOCKET NO. 571,254-A

VERSUS

FIRST JUDICIAL DISTRICT COURT

ACE AMERICAN INSURANCE
COMPANY, HAAS & WILKERSON
INSURANCE COMPANY, INC., SKY
ATTRACTIONS, LLC, MCDONAGH
AMUSEMENTS, INC., AND KMG B.V.,
INC.

CADDO PARISH, LOUISIANA

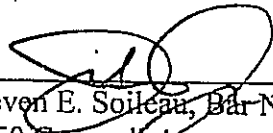
**REQUEST FOR TEN (10) DAYS NOTICE
OF SETTING AND OF JUDGMENT**

NOW INTO COURT, through undersigned counsel, comes MAYER, SMITH AND ROBERTS, L.L.P., which respectfully requests that it be given at least ten (10) days written notice in advance of any setting in the above captioned matter, whether same be for trial or hearing, etc., in accordance with Article 1572 of the *Louisiana Code of Civil Procedure*.

Appearer further requests written notice of any judgment or interlocutory order in accordance with Articles 1913 and 1914 of the *Louisiana Code of Civil Procedure*.

Respectfully Submitted,

MAYER, SMITH & ROBERTS, L.L.P.

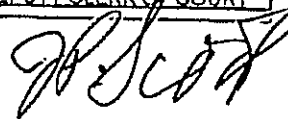

Steven E. Soileau, Bar No. 17150
1550 Creswell Avenue
Shreveport, LA 71101
Telephone (318) 222-2135
Facsimile (318) 222-6420

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing has been served on:

Dominick Impastato, III
Frischhertz, Poulliard,
Frischhertz & Impastato, LLC
1130 St. Charles Avenue
New Orleans, LA 70130.

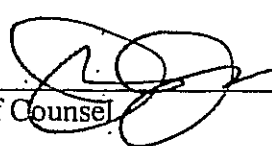
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JIM SCOTT CADDO DEPUTY CLERK OF COURT	



by placing a copy of same in the United States Mail, properly addressed and with adequate postage affixed thereto on this 13 day of November, 2013.

MAYER, SMITH & ROBERTS, L.L.P.

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CC CP MAIL N/J
INDEX REC FAX
W/D DOC CERT MAIL
SERVICE


Of Counsel

KLARISSA GRAVES

DOCKET NO. 571,254-A

VERSUS

FIRST JUDICIAL DISTRICT COURT

ACE AMERICAN INSURANCE
COMPANY, HAAS & WILKERSON
INSURANCE COMPANY, INC., SKY
ATTRACTIONS, LLC, MCDONAGH
AMUSEMENTS, INC., AND KMG B.V.,
INC.

CADDO PARISH, LOUISIANA

ANSWER

NOW INTO COURT through undersigned counsel, come SKY ATTRACTIONS, LLC, MCDONAGH AMUSEMENTS, INC. and ACE AMERICAN INSURANCE COMPANY, defendants, who in answer to plaintiff's petition, respectfully represent:

I.

Defendants admit their names, status and addresses. The other allegations relating to other defendants are denied as written.

II.

The allegations in paragraph II of plaintiff's Petition are admitted.

III.

The allegations of paragraph III of plaintiff's Petition are admitted.

IV.

The allegations of paragraph IV of plaintiff's Petition are admitted.

V.

It is admitted that plaintiff was a passenger on a ride known as the Fun Factory, which upon information and belief was manufactured by KMG B.V., Inc. The other allegations of this paragraph are denied as written.

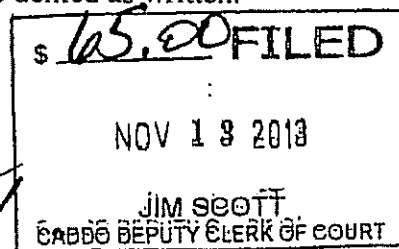
VI.

The allegations of paragraph VI of plaintiff's Petition are denied as written.

VII.

Upon information and belief, plaintiff was properly restrained and secured within the Fun Factory ride prior to the ride. The other allegations of this paragraph are denied as written.

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X.

The allegations of paragraph X of plaintiff's Petition are denied.

XI.

The allegations of paragraph XI of plaintiff's Petition are denied as written and for lack of sufficient information to justify a belief therein.

XII.

The allegations of paragraph XII of plaintiff's Petition are denied. It is specifically denied that the *Louisiana Products Liability Act* applies to Sky Attractions and McDonagh Amusements in any respect.

XIII.

The allegations of paragraph XIII of plaintiff's Petition are denied. Sky Attractions and McDonagh Amusements are not manufacturers within the meaning of the *Louisiana Products Liability Act*.

XIV.

Upon information and belief, KMG B.V. is a manufacturer of the ride. The other allegations of this paragraph are denied as written.

XV.

The allegations of paragraph XV of plaintiff's Petition are denied as written and for lack of sufficient information to justify a belief therein.

XVI.

The allegations of paragraph XVI of plaintiff's Petition are denied.

XVII.

The allegations of paragraph XVII of plaintiff's petition are denied.

XVIII.

The allegations of paragraph XVIII of plaintiff's Petition are denied. It is specifically denied that the doctrine of *res ipsa loquitur* applies to this case.

XIX.

Plaintiff alleges her injuries and death were caused by the ride. Upon information and belief the plaintiff was injured, but did not die. The other allegations of this paragraph are

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denied.

XX.

The allegations of paragraph XX of plaintiff's Petition are denied.

XXI.

The allegations of paragraph XXI of plaintiff's Petition are denied.

XXII.

The allegations of paragraph XXII of plaintiff's Petition are denied. *Res ipsa loquitor* is not applicable to plaintiff's claims.

XIX.

It is admitted that defendants may be responsible for actions of their employees while engaged in the course and scope of their employment. The other allegations of this paragraph are denied.

XX.

It is admitted that Ace American Insurance Company issued a policy of insurance, which is the best and only evidence of its terms and conditions and which are plead by reference hereto. The other allegations of this paragraph are denied as written.

XXI.

The allegations of paragraph XXI of plaintiff's Petition are denied as written and for lack of sufficient information to justify a belief therein.

XXII.

Further answering, defendants Sky Attractions, LLC, McDonagh Amusements, Inc. and ACE American Insurance Company deny any negligence or fault whatsoever in the premises.

XXIII.

Further answering, defendants Sky Attractions, LLC, McDonagh Amusements, Inc. and ACE American Insurance Company show that the ride was properly inspected, assembled and operated. It had been approved by multiple inspectors prior to its use at the Fair and had been used numerous with thousands of patrons without incident.

SCANNED 11/28/2013 00:00:00

XXIV.

In the alternative, defendants Sky Attractions, LLC, McDonagh Amusements, Inc. and ACE American Insurance Company plead the third party fault of persons for whom they are not responsible, including, but not limited to, plaintiff's companion, and KMG B.V., Inc.

XXV.

In the alternative, defendants Sky Attractions, LLC, McDonagh Amusements, Inc. and ACE American Insurance Company plead the comparative fault of plaintiff and third parties for whom they are not responsible, which fault acts as a diminution or bar to any recovery which might be had herein.

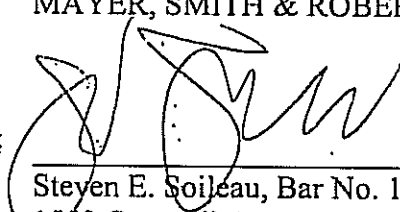
XXVI.

Further answering, defendants Sky Attractions, LLC, McDonagh Amusements, Inc. and ACE American Insurance Company seek and are entitled to a trial by jury on all issues.

WHEREFORE, defendants Sky Attractions, LLC, McDonagh Amusements, Inc. and ACE American Insurance Company pray that this answer be filed, and be deemed good and sufficient, and after due proceedings had, that judgment be rendered herein, dismissing plaintiff's claims, with prejudice, at her cost.

Respectfully Submitted,

MAYER, SMITH & ROBERTS, L.L.P.



Steven E. Soileau, Bar No. 17150
1550 Creswell Avenue
Shreveport, LA 71101
Telephone (318) 222-2135
Facsimile (318) 222-6420

SCANNED 11/26/13 09:00:00

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing has been served on:

Dominick Impastato, III
Frischhertz, Poulliard,
Frischhertz & Impastato, LLC
1130 St. Charles Avenue
New Orleans, LA 70130

by placing a copy of same in the United States Mail, properly addressed and with adequate
postage affixed thereto on this 13th day of November, 2013.

MAYER, SMITH & ROBERTS, L.L.P.



Of Counsel

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KLARISSA GRAVES

DOCKET NO. 571,254-A

VERSUS

FIRST JUDICIAL DISTRICT COURT

ACE AMERICAN INSURANCE
COMPANY, HAAS & WILKERSON
INSURANCE COMPANY, INC., SKY
ATTRACTIONS, LLC, MCDONAGH
AMUSEMENTS, INC., AND KMG B.V.,
INC.

CADDO PARISH, LOUISIANA

ORDER

Considering the foregoing:

IT IS ORDERED that Sky, Attractions, LLC, McDonagh Amusements, Inc. and ACE
American Insurance Company be and are hereby granted a trial by jury upon ^{depositing} ~~posting~~ the
① 3200.00 60 days prior to date of trial
~~security required by the Louisiana Uniform Court Rules and the Louisiana Code of Civil~~
~~Procedure~~

This 15 day of Nov, 2013.


DISTRICT JUDGE

SCANNED 11/28/2013 09:00:20